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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE REVIEW AND POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES, ARTICLE 12 OF THE ARIZONA ADMINISTRATIVE CODE.	DOCKET NO. RT-00000H-97-0137

QWEST CORPORATION'S NOTICE OF FILING ITS COMMENTS ON QUESTIONS RELATED TO THE POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES

In response to Acting Director Steven Olea's September 20, 2001 memorandum seeking comments on questions attached as Exhibit A of that memorandum, Qwest Corporation ("Qwest") hereby provides notice of filing its attached comments.

Respectfully submitted this 2nd day of November, 2001.

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QWEST'S COMMENTS ON THE COMMISSION'S QUESTIONS RELATED TO THE POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES

Qwest has general comments regarding changes to the Arizona Universal Service Fund ("AUSF") rules. Specifically, any changes to the Arizona Corporation Commission's (the "Commission") universal service rules should be competitively and technologically neutral. Funds should be made available on the same basis to any eligible telecommunications carrier ("ETC") regardless of (a) the technology used by a carrier to provide service or (b) the arbitrary classification of a carrier as rural or non-rural. Additionally, the Commission should only require the carrier to provide the services identified in the AUSF rules. The Commission will need to ensure that the AUSF funding is used solely for its intended purposes, as designated in the AUSF rules. Finally, any funding provided to carriers for the provision of service to unserved areas must be sufficient to allow carriers full, up-front recovery of construction costs, including the costs associated with right-of-ways, permits, and other related costs. The Commission must allow the carriers that are awarded funds a reasonable installation period.

The following are Qwest's responses to the questions posed by the Commission regarding Arizona's Universal Service Fund Rules. The scope of Qwest's opening comments are limited primarily to unserved areas.

1. **Are there areas within the existing rules where revisions should be made? If yes, please provide specific language recommendations and explain the benefit of the recommended revision.**

To ensure a less burdensome process for providing AUSF funds for unserved areas, the Commission must change R14-2-1203. A provider should not be required to request AUSF support through a R14-2-103 filing. Rather, a provider should be able to receive the support through either a competitive bidding process or a hearing process. These are more fully described in Qwest's responses to questions 2 and 3 below. Individuals who can show need for the services should be able to directly request a one-time distribution of funds in an under-served area.

2. How might the AUSF rules be amended to ensure the availability of wireline telephone service in unserved areas (open territory)? Please provide specific recommendations on issues such as required population density before service to an area must be provided, the method for determining the serving carrier, procedural process, etc.

First, Qwest recommends that the AUSF rules be technologically and competitively neutral. To ensure technological and competitive neutrality, Qwest recommends that the Commission expand universal service support beyond traditional "wireline" services and create incentives to ensure the availability of the services supported by the universal service fund, regardless of whether the services are wireline or wireless. Since the current AUSF rules require all wireless providers that interconnect to the public switched network to contribute to the AUSF, these providers should also be eligible to receive fund support, following the proper ETC designation procedures.

The Commission should next address the definition of "unserved area"/"open territory." As a legal matter, "unserved areas" or "open territories" no longer exist as they once did in Arizona because every area in Arizona has a carrier that is certificated to provide services in that area. However, some areas are, in fact, unserved because the Commission has chosen not to enforce the obligations to serve customers within the CLECs' certificated territory. If the Commission treats all areas not currently certificated to an ILEC as unserved, then it must use the AUSF as a method to motivate ILECs and competitors to provide service.

Currently, providers have little incentive to develop the service infrastructure in "unserved" areas. It is costly and the existing federal and state funding mechanisms fail to compensate providers for their expenses to provide services to these areas. The AUSF rules need to be amended to offer all providers incentives to provide the supported services in "unserved" areas. Specifically, providers who must build the infrastructure to offer universal service in "unserved" areas should be fully reimbursed, up-front, from the customer or the fund or a combination of both for the carrier's investment to build the infrastructure. The process should be expressly stated and should ensure competitive and technological neutrality. This neutrality will allow for the deployment of the most efficient technologies to serve these remote customers.

Before providing funds to any one provider to serve an unserved area, the Commission should first seek competitive bids from providers in an attempt to get a voluntary provider to serve all requesting customers in the area or community. The competitive bidding process is the best way to select the most efficient carrier for an unserved community. The bidders should submit bids detailing (1) the amount of support per line needed and (2) the amount of one-time up-front construction support needed to ensure full cost recovery. The Commission should dictate the affordable benchmark in advance. The Commission should base the provider's reimbursement on its estimated cost to serve the area, subject to true-up.

The party winning the bidding process must recover its actual costs from its customers and universal service support prior to any construction. The amount of support cannot exceed the winner's bid. Because of the unpredictable demand and high likelihood of defaulting customers, the bidders must be assured of full recovery in order for the process to be viable. One way to ensure payment from potentially defaulting customers is to have the customers or the

AUSF pay up-front for the construction costs. Without full explicit support, efficient entry in high-cost areas will be discouraged.

In developing the procedures for the competitive bidding, the Commission will need to consider a number of items. For instance, the Commission should consider (i) who should participate in the process; (ii) how many winners should be chosen; (iii) the contents of the bid, (iv) what should be the term of the exclusivity period, if any; (v) what procedural mechanisms should be used for selecting the bid (i.e., a sealed bid or a descending multi-round action); and (vi) what procedures should the Commission use in the event there is only one bidder.

The participants in the process should include those parties (1) already certificated for the area or (2) who wish to be certificated for the area. The process should result in an award to the lowest qualified bidder. Once the winner is selected, the commission should not provide universal support to duplicate networks. This would result in funding some areas twice and could unnecessarily increase the burden on the fund.

In the event the bidding process fails (*i.e.*, no bids are received to serve an area), the Commission may order the "best able" certificated carrier to provide services. The federal statutes authorize a state commission to designate an involuntary eligible telecommunications carrier for an unserved area for those carriers receiving support, pursuant to 47 U.S.C. § 214(e)(3). In choosing the carrier, the Commission should only look to those who hold or have applied for certificates and are receiving federal universal funding for the area at issue. The Commission must use a hearing process prior to selecting a carrier to ensure that the burden to provide service in unserved areas does not fall unfairly on any one provider. The responsibility must be borne by all providers in some equitable fashion. The Commission may resort to a multi-factored analysis to determine the "best able" carrier. Those factors can include (1) the cost for that carrier to build facilities capable of providing the supported services (both installation and ancillary costs); (2) the quality of services that would be provided; (3) the financial strength of the carrier; (4) the proportionate impact serving the area would have on the number of lines and the geographic area served by the carrier; (5) the amount of time required for the carrier to deploy facilities; (6) the amount of support for which the carrier will qualify; and (7) the shared responsibility of all carriers certificated in the area to provide services in the area.

3. How might the AUSF rules be amended to increase the availability or affordability of wireline telephone service in under-served areas? Under-served areas are defined as areas within a wireline carrier's service territory where construction or line extension charges apply.

Qwest recommends that the AUSF rules be technologically and competitively neutral. To ensure this neutrality, Qwest recommends that the Commission expand universal service support beyond "wireline" services and create incentives to ensure the availability of the services supported by the universal service fund, regardless of whether the services are wireline or wireless.

The Commission defined under-served areas as areas within a wireline carrier's service territory where construction or line extension charges apply. (The Commission should note that tariff provisions addressing these charges vary amongst carriers as described in the response to Question 7 below.) The Commission should consider clarifying the definition for under-served areas so that the distinctions between "unserved" and under-served areas are clearer. In creating a clearer definition for under-served areas, the Commission should consider whether (i) an under-served area is an entire community lacking service or a smaller group within a community lacking service, (ii) the definition should be based on the use of construction or line extension charges in the area, (iii) core services are already available, (iv) facilities already exist in the area and a carrier is obligated to serve in the area, or (v) the public need for the extension of service into the area.

Further, with regard to under-served areas, the Commission may wish to consider revising the AUSF rules to allow individuals and communities to apply for a one-time distribution from the universal service fund. These distributions should only be made when traditional methods of funding are unavailable or providing services to the area is extremely costly. The Commission should develop an application procedure to evaluate the requests and ensure that the system is not abused (*i.e.*, which may include an application charge). As part of their application, these individuals or communities must first demonstrate a need for these services. In evaluating an application, the Commission should consider (i) the cost of providing the service, (ii) the demonstrated need for the service, and (iii) whether the location is for a primary residence. In developing these procedures, the Commission should also consider how much universal service support funding it is willing to contribute to individuals. The Commission may impose a reasonable limit on the amount of AUSF funding available to individual customers or communities. Customers receiving support through this process should, for example, contribute a set percentage towards the total cost of constructing the infrastructure. The Commission may find it necessary to impose a cap on the amount of money a customer should contribute. This is discussed more fully in Qwest's response to question 7. If the carrier is required to contribute because the carrier has a construction tariff for the area, then all carriers should be required to contribute the same amount. (Qwest discusses the current, non-standardized construction tariffs in response to question 7).

4. **Under what circumstances, if any, could AUSF be made available to carriers that do not have Eligible Telecommunications Carrier status?**

Under the voluntary or competitive bid process, any provider that does not have Eligible Telecommunications Carrier ("ETC") status during the bidding process, but is eligible for ETC status, should be allowed to participate in the bidding process. When a carrier that wins the bidding process does not have ETC status, it must be granted ETC status prior to receiving AUSF funds. If a carrier lacking ETC status is selected through the bidding process, the Commission should apply the eligible communications telecommunications carrier designation criteria, which are established by the Commission pursuant to 47 U.S.C. § 214(e)(3), before granting the carrier access to AUSF support. If the carrier meets these criteria and receives ETC status, this selection process ensures that the carrier will (i) use the universal service fund support for the intended purposes and (ii) continue to provide services in the area. If the carrier does not meet these criteria, then the carrier should not be awarded the bid and the Commission should select the next lowest bidder.

5. **Should the definition of local exchange service, for AUSF purposes, be broadened to include other services? If yes, how might it be accomplished?**

Currently, "basic local exchange telephone service" for the purpose of the Arizona universal service fund provides the following features: (1) access to a 1-party residential service with a voice grade line; (2) access to touchtone capabilities; (3) access to an interexchange carrier; (4) access to emergency services, including but not limited to emergency 911; (5) access to directory assistance service; (6) access to operator service; (7) access to a white page or similar directory listing; and (8) access to telephone relay systems for the hearing and speech impaired. Ariz. Admin. Code R14-2-1201(6).

The basic local exchange telephone services should not be expanded beyond these listed local exchange services. Based on the current state of the telecommunications industry and the characteristics of the incumbent voice transmission infrastructure, it is the view of Qwest that any modification of these listed local exchange services would not be in the interests of all customers and is not necessary at this time. An expansion is not in the best interests of the customers because when carriers are required to rebuild their networks to provide expanded levels of service, the public bears the ultimate burden to pay the extraordinary expenses associated with this expansion. These higher costs would likely jeopardize future public support for the fund.

Although the definition should not be expanded to include additional services, it should recognize that alternative technologies, which offer the basic local exchange telephone services listed above, should be eligible to apply for AUSF funding.

6. Are there USF rules in other states that should be adopted in Arizona? If yes, please provide the specific language for each rule and explain the benefit that would be derived by adopting the rule in Arizona.

Arizona faces unique challenges regarding unserved areas because of the large amount of territory that is unserved. No one state has an entire set of rules that should be adopted in Arizona. However, as a starting point, the Commission may wish to review a rule proposed by Utah's Assistant Attorney General that allows a customer to apply for a one-time distribution from the universal service fund.

7. How might construction or line extension tariffs be standardized between companies? Should there be an AUSF contribution in addition to the company contribution? Should there be a maximum amount a customer should be expected to pay to obtain service? Should this amount consider the median household income of the area being served? Assuming there is an AUSF contribution, what is a reasonable limit?

Construction and line extension tariffs do not and should not apply in unserved areas as opposed to under-served areas. In unserved areas, the carrier should recover all its costs from the customer, the universal service fund, or both since the Commission cannot apply a tariff and thus cannot require a carrier to pay a portion of the costs. In areas where a carrier is certificated to serve (*e.g.*, areas that for certain CLECs include the entire state), if the Commission imposes tariffs, then it should standardize the construction and line extension tariffs so that each carrier contributes the same amount. When these tariffs are not standardized, certain carriers are required to bear more costs than others. To the extent that the Commission requires carriers to credit customers with some portion of the costs of construction, the Commission should set a standard, reasonable amount for all ETCs.

The present construction and line extension tariffs are not standardized. For instance, Table Top Telephone Company, Midvale Telephone Exchange, and Qwest must pay the first $3,000 to extend their lines to reach customer. On the other hand, Southwestern Telephone Company pays for the first 750 feet of extensions to the plant from the line extension boundaries and Citizens Telecommunications Company of the White Mountains, Inc. constructs, at its expense, a maximum of 5/10 mile of outside plant facilities per applicant. In contrast, Arizona Telephone Company pays a "construction allowance" that is in accordance with the long-term financing loan agreements with the Rural Electrification Administration and the United States Department of Agriculture.

The Commission may consider whether there should be a maximum amount a customer can be expected to pay to obtain service. The maximum should vary depending on the circumstances of the individual or community requesting service. The Commission can review this amount on an area-by-area basis using a number of factors such as (i) the median household income of the area being served, (ii) whether the area includes primary residences or vacation homes, (iii) the estimated construction costs, or (iv) whether the customer is in an unserved or under-served area.

As discussed in Qwest's response to question 3, if the construction costs are prohibitive in a carrier's serving area, a customer may apply for universal service fund assistance. Prior to distributing any funds, the Commission should ensure that the customer needs AUSF funding. If the Commission determines that the customer has need for services, then the carrier, in its certificated area, should pay a standardized amount pursuant to a tariff; the customer should, for example, pay a set percentage of the remaining quote; and the AUSF should pay the remainder. This ensures that all parties share a reasonable burden in providing services to an area and minimizes the AUSF's burden. If additional customers are brought into service using the same facilities, they would need to pay the same set percentage as the first customer. However, since construction costs have already been paid by the carrier, the original customer and the AUSF, these payments should be used to "reimburse" the AUSF.

The limit on AUSF contribution should be a reasonable limit and no provider receiving AUSF support should realize a windfall (*i.e.*, receive double payments from both the federal and state universal service funds).

8. Are there changes in the Federal USF rules of which Staff should be aware? If yes, please identify them. How do these changes impact current AUSF rules? How might they impact recommended revisions to the existing rules?

In the FCC's Fourteenth Report and Order in CC Docket No. 96-45, the FCC adopted a new five-year universal service plan that increases universal service support for rural carriers. The plan allows the rural fund to expand in absolute dollars, the growth amounts to approximately $1.26 billion over the next five years.

9. Are there changes in other Federal rules that might impact current or future AUSF rules? If yes, please identify them and their potential impact.

The FCC has requested comments on proposed rules for unserved and under-served areas. Various carriers have provided comments and these comments are publicly available. The Arizona Commission should keep abreast of any developments in this process.

10. For all other comments please provide a narrative fully explaining the issue being discussed, any recommendation and the benefit to be gained if the recommendation is adopted.

In conclusion, Qwest is providing these comments regarding the AUSF rules solely with respect to the unserved and under-served areas issues. These comments are not meant to address all aspects of the AUSF rules.

These comments provide only an outline of issues the Commission should address in revising the AUSF rules related to unserved and under-served areas. These concepts should be further developed in meetings with the interested parties, workshops, and additional requests for comments.

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